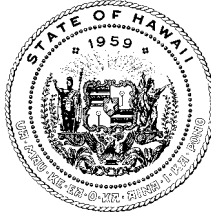


LINDA LINGLE  
GOVERNOR OF HAWAII



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**STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES**

STATE HISTORIC PRESERVATION DIVISION  
601 KAMOKILA BOULEVARD, ROOM 555  
KAPOLEI, HAWAII 96707

**MINUTES  
KAUAI / NIIHAU ISLANDS BURIAL COUNCIL MEETING**

**DATE: WEDNESDAY, APRIL 6, 2005  
TIME: 9:00 A.M.  
PLACE: QUEEN LILIUOKALANI CHILDREN'S  
CENTER – LILIUOKALANI TRUST  
4530 KALIA ROAD  
LIHUE, HAWAII 96766**

**ATTENDANCE:**

**Members:** La France Kapaka-Arboleda, Chair  
Mark Hubbard  
Grace H. Kamai  
Donna Aana-Nakahara  
Catherine Ham Young Pfeffer  
Leiana Robinson  
John Kruse  
Presley Wann

**Absent:** Sandra Quinsaat (excused)  
Tom Shigemoto (excused)

**Staff:** Kanai Kapeliela, Historic Sites Specialist  
Nancy McMahon, Kauai Archaeologist  
Vince Kanemoto, Deputy Attorney General

**Guests:** Ron Agor Paul Keeno  
Jim Powell, SCS Ted Burkhart  
Hal Hammatt, CSH Gerald Ida, CSH

**I. OPENING REMARKS**

Chairperson La France Kapaka-Arboleda opened the meeting at 9:02 a.m. She said that she received two notices of members who were unable to attend, Sandra Quinsaat and Tom Shigemoto.

## **II. BUSINESS**

### **A. LIHUE 56, LLC, ZONING PERMIT APPLICATION, LIHUE DISTRICT, KAUAI [TMK: (4) 3-6-004:009]**

**Information / Recommendation:** Discussion of historic Hookano / Opunui burial site and proposal to preserve in place.

McMahon shared that the matter before them pertained to a zoning permit application change for a housing development project. Nearly ten years ago, the chair and member Shigemoto and Kapaka-Arboleda were involved with the parcel upon notification of a historic burial on the property.

Paul Keeno introduced himself as representing the developers for the property. The burial is on the border northern border of the property. Their intentions are to plan around the burial, with some native Hawaiian plants surrounding. They plan on preserving it in place.

Ron Agor identified himself as the architect for project. He wanted to get feedback from the council on whether they want to emphasize and bring attention to the burial site or just landscape around it.

Chair Kapaka-Arboleda said that while she hasn't gone through the burial registration process, she disclosed that she is a descendant. She gave a history of her family's tie to the place, particularly the Opunui, and Rice connection in her genealogy. She wanted to know if these condos would have common areas. She asked if the owners had a common area ownership and was it similar to a CPR condo unit, to which Keeno answered in the affirmative. The chair asked if all 56 owners would technically have an interest in the gravesite. Agor said they would be able to condo it off. Chair Kapaka-Arboleda was concerned about future legal entanglements that may arise and asked that arrangements to address her concerns be stipulated in writing upon when her burial application goes through. Agor said it wasn't a problem.

Agor asked if they wanted to open the gravesite to the public. Chair Kapaka-Arboleda said it didn't matter, as long it was delineated. Agor clarified the exact location of the burial. McMahon asked if they needed a letter from SHPD and Agor said it would be appreciated.

Chair Kapaka-Arboleda asked when she would be able to get a site number for the burial. McMahon referred her to Eric of the SHPD Oahu Office. Kapeliela explained that McMahon used to be able to issue site numbers before, but somewhere along the lines the procedures changed. Chair Kapaka-Arboleda stated for the record that it very important to her because she doesn't want to repeat what happened in Lihue, where there was no site number and she thought there was one but the state never finish the paper work.

***A motion was made "to approve the preservation in place of the Hookano/Opunui burial site." (Hubbard/Say)***

**VOTE: ALL IN FAVOR. MOTION CARRIES.**

**B. BOTHMAN PROPERTY, KALIHIWAI, HANAIEI DISTRICT, KAUAI [TMK: (4) 5-3-003:014]**

**Information / Recommendation:** Status update.

McMahon introduced Jim Powell of SCS, who was present to update the council on this project that started several years ago with Joe Kennedy firm. We have had a number of burials and we made a burial preserve on corner of this 10,000 square feet lot. We meet years ago with the Bothman family. The decision was at that time to disinter and relocate. Since that time, they have started construction and the archaeological monitoring by SCS.

Powell said SCS took over the project in 2004, when the residents began building their house. During foundation work, eleven burials were exposed and removed via the proper procedures. They are presently being stored on the property, except for one, which was moved into the storage shed on State property. They would like to reinter these individuals into the reinterment site on the property. Typically during this type of residential construction, they do the foundation work first, they complete the house which usually takes a year and a half, and they come back in and do the leach field and septic tanks. Usually they wait until they have completed everything before they reinter.

But because there is a reinterment site on the property, rather than having them sitting around for a year and a half, they'd like to advance that process and rebury them as soon as possible.

Kapeliela asked what would happen if additional burials are found. Powell said they would be reinterred in the designed area. Then there would be three reinterments, the original one, the ones currently being proposed, and any future burials that may occur when the leach field and septic tank goes in.

Say asked if the lot was big enough to accommodate for the house and the iwi. Powell said the reinterment site has already been designated and there actually does seem to be a little more room to accommodate additional burials if they are encountered. He said that from the plans, the leach field and septic tank is going to be on the opposite side of the house from where the reinterment site is, so it does appear to be enough room.

Chair Kapaka-Arboled asked if the underground holding area is actually entombed and not just a hole. Powell said he was unsure how it was constructed cause that was Kennedy doing. The chair believed it was a vault. Powell asked if there was anymore room in the vault. McMahon said she thought there was supposed to be. The chair said it was there when we put the first sets in. There was a lot of room and it will be easy to find. It's on the eastern front of the property. Powell said if the council and the State agreed, they would like to begin that process.

(Unidentified male council member) commented on the new codes. With this septic system it seems like we are going to keep on having these same problems. Plus, there's more surface area being covered. When the people start putting the house plans, they need to have the footprints presentable. Many times it's going to keep on happening.

When people come before the burial council and going through the planning process of homes, they need to have the footprints of all these areas designated before hand. So when they do a monitoring survey, you can pretty much pinpoint areas a head of time. Powell asked if he was talking about for the reinterment site or for testing. (Unidentified male council member) said it's both, narrow down some of these problems during inventory. Also, the way the septic systems are now designed, they're covering an area almost as big as the house. So we keep on having this problem and culturally a lot of people start having problems with the leach field being with the iwi in the ground. We got to think about like Bothman wasn't to bad. I remember correctly it was elevated a little bit. So we don't start feeling culturally insensitive problem that are going to start happening.

Chair Kapaka-Arboleda offered some comments and said there is a lot of controversy. It was very hard to decide. Just as a Hawaiian looking back on the importance of old time families and their declaration on where their kupuna lie. Such information would certainly alleviate the burden on the burial council if they would come out and identify exactly, and if the State would follow through and confirm that they have registered their burials. If such actions were done, then there would be no need for controversial planning such as in this case. This was quite obvious at one point in time, somebody knew what they were doing on that lot. It was just too condensed and we didn't realize it until we started going in to what unfortunately appears to be a graveyard.

Powell said this was already approved to be reinterred on-site a number of years ago, and so this was just request to do an early-reinterment. McMahon said the normal process is to wait until construction is complete before reinterment. We have sensitive burials and the storage shed on the property may be broken into fairly easily.

***There was a motion “to approve the early reinterment for the currently known iwi on the site, the Bothman property.” (Hubbard/Say)***

**VOTE: ALL IN FAVOR. MOTION CARRIES.**

Powell asked if they need any kind of approval from the State or can they just move forward. Kapeliela said he would send SCS something in writing.

#### **C. BRESCIA PROPERTY, WAINIHA, HALELEA DISTRICT, KAUAI**

**Information / Recommendation:** Ted Burkhart request to relocate reinterred inadvertently discovered human skeletal remains.

McMahon shared that Burkhart sent a letter to SHPD and he planned on coming, but it coincided with a meeting he had scheduled three months ago. He may or may not be present. Kapeliela had told him that he did not need to be present. The Brescia property is located in Wainiha, about three blocks from the Smith property and the YMCA, right along the coast. They were doing a leach field and a septic tank and encountered an inadvertent burial. The backhoe got most of the burial, which became fragmented. It was screened and later SHPD was called when a reinterment site was designated. Chair Kapaka-Arboleda and McMahon wrapped the remains and went on-site to do the reinterment. They were concerned with the reinterment site, which was a hole dug

underneath the house. The room directly above the site was a bedroom. They questioned the location site, but they were told that it was okay, so reinterment was done. However, the request today is for relocation of the previously reinterred remains because the property owner and his wife has since experienced hauntings.

Kapeliela asked the landowner to write a letter to state his concerns and reasons for relocation. Kapeliela said that the matter has been discussed with the AG's office. When the burial was originally found, it was inadvertent. The question asked to the AG's office was that upon reinterment, is the burial now classified as a previously identified burial that goes to the council rather than SHPD? The AG's response was that once it's inadvertent, it's always an inadvertent. Thus, this relocation request is technically under the department's jurisdiction. The relocation can take place in consultation with council input. He recommended that council members visit the property to identify an appropriate reinterment site so as not to have the same problem occur.

Chair Kapaka-Arboleda asked, when SHPD makes a determination on inadvertent burials, are they beholden to the wishes of the landowner with respect to reinterment sites? Does SHPD staff have the discretion to share their mana'o as to what is an appropriate site, or do they defer to the landowner? Kapeliela said the wording in statute specifically says that the department determines the place of relocation. Everyone is consulted and gives their input, but the responsibility ultimately falls on the state to make the final binding call.

Say asked if any families have come forward for the burial. Kapeliela said the problem is that there are two types of classifications of burials, previously identified and inadvertent. Previously identified burials are generally found during archaeological survey or if a family comes before the council, where the council recommends based on oral testimony presented. The council recommends to the department that the burials be documented as previously identified and under the jurisdiction of the council. There is a certain amount of time for the council to make their determination of relocation or preservation in place. Notice published in a newspaper is mandated with previously identified burials. Whereas, the department is under time constraints to make their determination when it comes to inadvertent burials. On Oahu, a single set of remains must be determined preservation in place or relocation within 24 hours. Multiple remains require 48 hours for a department determination. On the neighbor islands, 48 hours are given to the department for single remains, and 72 hours for multiple individuals. Due to the time constraints involved with inadvertents, there is no publication and most families don't know. When Act 306 was passed in 1990, one of the concerns from landowners was that too much time would cost them money and this was the compromise. If the department needs longer to make the decision, an extension can only be granted with landowner's authorization. Thus, families do not know about inadvertent burials because of the time constraints.

Chair Kapeka-Arboleda disagreed with the AG's ruling that inadvertents remain inadvertent forever. An inadvertent reburied is a site known. Deputy AG Kanemoto said previously identified burials are those found during archaeological inventory survey. However, his interpretation of the law differed. He cited §13-300-31, HAR where "a

burial site recognized by the department based on oral or written testimony shall be classified as previously identified.”

McMahon said previous discussion in the SHPD office since 1990, where the original site where the burial is found is classified as “burial site.” Upon reinterment, it is no longer under historic site’s jurisdiction because it’s deemed a “reinterment site” and not given a site designation. Their given “R” numbers and they don’t get protected the same way. When someone disturbs a reinterment site, it’s not a burial site protected under chapter 6E. The way it’s listed in the SHPD database is where the dilemma lies. Deputy AG Kanemoto said it’s still a burial and protected. Kapeliela interjected that the State Inventory Historic Places (SIHP) designation requires 50 yrs or older. But because the reinterment is less than 50 years, it’s not given an SIHP number.

Chair Kapaka-Arboleda was dismayed on the issue, citing the clash between being a Hawaiian versus being a statistician. The iwi are over 50 years old. Deputy AG Kanemoto said the law needs to be amended. McMahon said it was a controversial topic greatly discussed in the SHPD office from when Eddie Ayau was involved. The Smithsonian repatriation case was cited. The chair questioned the process and was uncomfortable because the path is uncharted for the future generations. Why isn’t this issue resolved? Deputy AG Kanemoto said anyone could petition the department for a rule change or amendment to clarify the matter.

McMahon said both she and the chair questioned the location site prior to reburial and they were assured by the person there that it was acceptable.

(John Kruse arrived at 9:38 a.m.)

Burkhart arrived and was introduced as representing the landowner. McMahon asked him where he would like to relocate the burial and how was the original reinterment site decided. Burkhart said he was unsure, he was off-island for a week and it was already reinterred underneath the house when he came back. He asked who made the determination and the workers said they were told to dig a hole there. To this day, he is unsure. He said Mr. Brescia requests that the burial be removed from under the house. He disclosed that he is also in the process of selling the house. He cautioned the council about the heavy rains in the area and how he’s reluctant to recommend a relocation site, as the landscaping is arranged in such a way that it ponds. He did, however, offer a location in a raised planting bed that is fairly close to where the burial originated, which would not be disrupted in future. He said Mr. Brescia did not specify a relocation site but just asked that the burial be relocated. He said the water floods to the middle. Any water that falls on the property stays and just comes underneath the house. He said he’s not a strong advocate one way or the other, he’s just making the presentation.

McMahon disclosed that Mr. Brescia has another inadvertent burial from his Hanalei property on Opelu street that also awaits reburial. Burkhart said they were ready for reinterment on that project.

(Tape 1, Side B)

*There was a motion that “we recommend that the department make the call on the reinterment of a reinterred” burial. (Hubbard/Say)*

**VOTE: 9 AYES, 1 NAY (Wann). MOTION CARRIES.**

Wann shared that it was unfortunate and culturally insensitive to have to reinter a previously reinterred individual.

**D. WAIPOULI BEACH RESORT, WAIPOULI, KAWAIHAU DISTRICT, KAUAI  
[TMK: (4) 4-3-008:001]**

**Information / Recommendation:** Status update

McMahon said Hammatt of CSH was present. Hammatt goes back to before Hurricane Iwa. The Inventory Survey included extensive testing throughout the property. It's located across the Safeway in Waipouli next to the canal. Burials were found during the survey, one of which was reinterred and the rest were preserved in place. During data recovery, other remains were also found, which stretched over a period of ten years. Upon completion of the data recovery, in preparation for final construction, geotesting was done and two additional remains were found and left in place because the requirement was for an on-site storage facility to place the disinterred remains. Copies of maps were distributed to the council for their information. Construction Burials #1 and #2 were found through geotesting before construction started. All the others were found during construction. All have been disinterred, except for Burials #17 and #18 of which an SHPD letter recently requested disinterment. The project is monitored by Gerald Ida and Missy Kamai. Unlimited Construction Company is going out of their way to assist. Imported fill on which to build the project was done in anticipation of encountering burials. Probing before trenching was also accommodated. Burials #13, 16, 17, 8, 7, 11 and 9 were found in a cluster are in a major sewer line. He identified proposed drainage lines to the council. The probability of encountering more burials is high.

Gerald said in reference to the numbers on the map, he preferred to identify them burial locations, rather than actual burials because some of those locations have multiple remains. For example, #3 had at least three individuals. #1 and #2 found during soil testing had remains of at least two individual. Both of them were heavily previously disturbed. Because of their close proximity, both burial areas could be the remains of just two individuals. But they could not verify that given the condition and incompleteness of the remains. At this point, there are 17 identified burial locations and between 20-21 separate individuals identified. Around 5 individuals were previously disturbed.

McMahon asked how many has been reinterred and are in the preserve area. Gerald answered that a dozen were disinterred and at least 3 or 4 were left in place. These were all inadvertent discoveries found during construction. The chair said this project started before Iniki hit, where she has records that date back to 1990.

The chair asked for a synopsis for the council as to how the decision to remove them or preserve them in place was determined. McMahon shared that each burial was looked as a separate case in consultation with the Chris Singleton, Chair Kapaka-Arboleda,

Kapeliela and McMahon. Because most were in the sewer line, it was inappropriate to keep them in place. Kapeliela cited §13-300-36, HAR, which defines the criteria the department must consider before determining preservation or relocation. The decision was not done arbitrarily. Sub-criterias are also specified where the department must give due consideration as to the cultural appropriateness, possible harm to the burials if left in place, requests of known lineal or cultural descendants, and any reasons from the landowner. Sewer lines next to burials are culturally inappropriate, and could cause possible future harm to the burials if the sewer line breaks. In this case, it was choosing the lesser of two evils.

The chair recommended a future site visit if there was a desire by the members. Kruse asked about notice of publication calling for descendants. Chair Kapaka-Arboleda disclosed that a claimant came forward in response to some of the burials, with specific information identified. Upon testing, it did not correspond and the claimant withdrew their claim. Other claims have been made publicly from across the street, but they have never formally filed a claim. McMahon clarified for Kruse that inadvertent burials do not have notice of publication; rather previously identified burials have notice.

(Tape 2, Side A)

#### **E. BURIAL COUNCIL MEMBERSHIP**

**Information / Recommendation:** Discussion, recommendations, and updates regarding burial council membership.

Kapeliela said the department doesn't have anything to report on the matter. The chair identified Wann as a holdover until June.

**III. ANNOUNCEMENTS** – There were no announcements.

#### **IV. ADJOURNMENT**

Chair Kapaka-Arboleda thanked everyone for attending and adjourned the meeting. (Time of adjournment was not documented.)

Respectfully Submitted,

Sunny Greer  
Administrative Assistant